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OGUNQUIT PLANNING BOARD
PUBLIC HEARINGS and
REGULAR BUSINESS MEETING MINUTES
DUNAWAY CENTER MAIN AUDITORIUM
MONDAY MARCH 27, 2017

PUBLIC HEARINGS

FAIRPOINT COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Site Plan Review Application to install wireless small cell antennas and related equipment on existing utility poles.

Attorney Scott Anderson addressed the Board and the Public and gave an overview of the proposed project. Attorney Anderson does the local permitting for Verizon Wireless in Maine. He introduced the Applicant's other representative Ben Madden from Tilson Engineering Firm which works on the cell sites.

Attorney Anderson summarized that the proposed small cells are not macro tower sites that cover large areas. They are small cells which enhance and beef up network signals in areas where there is a lot of cell phone use; particularly along the Route One corridor and the beach areas. He noted that there are existing cell towers however these small cells provide a more targeted increased coverage where there is higher demand.

Attorney Anderson noted that demand has increased exponentially recently, particularly with the development of "smart technology" in the form of tablets, data demand, and things like the smart parking meters proposed for the Ogunquit Town parking lots. The Applicant is proposing starting with three sites at the northern end of Town along Route One.

These small cells are smaller in size than towers. They tie in with the electricity and fibers already on the poles; and they don't produce noise or other disturbances. The one downside is that they are visible. Verizon has attempted to disguise them with shrouds which only made them more visible.

Two issues were raised at the March 13th meeting which the Applicant responded to in their March 20, 2017 submissions.

1) The Board asked about radio frequency emissions. Attorney Anderson referred the Board to the submission indicated as Tab A which illustrates the radio frequency emissions which put out a maximum of 20% of allowable emissions. The only time this increases is when a technician has to climb the pole to work on the equipment. When that occurs the equipment is shut down. Pedestrians walking at ground level next to the pole will normally receive close to zero emissions.

2) The Board asked for a visual illustration of the equipment and its mounting on the Pole. Attorney Anderson referred to Tab B which contained illustrations which show the scope and scale of the equipment. He noted that these photographs are from equipment already installed in New Jersey.

Attorney Anderson suggested that when the equipment is mounted on existing utility poles it will blend in with the already existing equipment and will hardly be noticeable.

The Board also asked whether or not the Applicant needs a permit from the DOT because of the proposed use of utility poles in the public right-of-way. He checked with Fairpoint and CMP and was told that they don't need anything from DOT because they have already established easement rights on the poles. However, just to be safe, Attorney Anderson contacted Mike Moreau, the DOT director for utility easements who informed him that he (Mr. Moreau) was in the process of presenting recommendations to the DOT which will require notice from applicants of their intent to place equipment on the poles. These Notices will be less "permits" and more notices of who has equipment on the DOT's poles. Attorney Anderson informed the Board that the DOT is still trying to figure out the best protocol. At this time Attorney Anderson asked the Board for permission to submit the DOT Permit/Notice after approval from the Board. He agreed that no work would be done until the Permit/Notice has been submitted to the Code Enforcement Office. Attorney Anderson noted that the Ordinance does require the Board to not make a determination until all permits are in hand, however this is a unique situation because the DOT hasn't determined its own protocol regarding issuing permits for this type of work. He noted that the Board also has the discretion to grant approval conditional upon the future submittal of the DOT permit as long as no work is done prior to that submittal.

Attorney Anderson also noted that under Sections 9.16.A and B of the Ogunquit Zoning Ordinance an antennae going on an existing structure must blend in with that structure to minimize its visual impact. He suggested that this language was drafted at a time when things would be placed inside church steeples or fake chimneys. At this time, with equipment mounted on utility poles, they can color the equipment with a base color, or they could encase it in a shroud or covering, however it is his opinion that this would make it more visible than simply mounting it and painting it a neutral color.

Mr. Wilkos asked if there was anyone in the audience who wished to speak for, or against, this application. There being no one the Public Hearing was closed at 6:22 p.m.

RENATA MOON LLC dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2. Design Review and Site Plan Review for a pre 1931 structure. Application to remove existing garage and replace it with a new structure: garage with two units and an owner's quarters above.

Michelle Tourangeau summarized that the project involves the demolition of an existing two car garage with two guest units; and the construction of a new structure which will contain a one car garage and two guest units on the ground floor and an owner's apartment on the second floor. They will be reducing the total number of guest rooms from the current ten rooms to nine rooms.

Mr. Wilkos noted that the Board held a Site Visit earlier in the afternoon. He asked if there was anyone who wished to speak for, or against this application. There being no one the Public Hearing was closed at 6:25 pm.

REGULAR BUSINESS MEETING

A. ROLL CALL –

Members Present: Steve Wilkos (Chair)
Rusty Hayes (Vice Chair)
Muriel Freedman
Jackie Bevins
Mark MacLeod

Also Present: Scott Heyland, Code Enforcement Officer
Lee Jay Feldman, Town Planner from SMPDC
Natalie Burns, Esq. Town Attorney
Maryann Stacy, Recording Secretary

B. PLEDGE OF ALLEGIANCE -

C. MISSION STATEMENT – The Planning Board Mission Statement was read by Mr. MacLeod.

D. MINUTES – **March 13, 2017 Site Visit, Public Hearing and Regular Business Meeting.**

Mr. Hayes Moved to Approve the Minutes from the March 13, 2017 Site Visit as Amended. HAYES/MACLEOD 4:0 (Ms. Bevins was not in attendance at the March 13, 2017 Site Visit)

Mr. Hayes Moved to Approve the Minutes from the March 13, 2017 Public Hearing and Regular Business meeting as Amended. HAYES/MACLEOD 5:0

E. PUBLIC INPUT – **For any matter NOT already on this Agenda.**

Mr. Wilkos asked if there was anyone who wished to be heard on any matter not on this meeting's agenda. There was no one.

F. UNFINISHED BUSINESS –

1. FINDINGS OF FACT FOR:

- a) **OGUNQUIT SEWER DISTRICT – 80 Marshview Lane – Map 10 Block 54 – SGD1- Design Review and Site Plan Review for a post 1930 structure. Application to add a second story and new access stairwell to existing garage. Also, internal modifications and ADA entrance improvements to existing control building. *Approved on March 13, 2017.***

Mr. Hayes Moved to Approve the Findings of Fact for the OGUNQUIT SEWER DISTRICT – 80 Marshview Lane – Map 10 Block 54 – SGD1- Design Review and Site Plan Review as Amended.

HAYES/MACLEOD 5:0 UNANIMOUS

- b) **ALMOST FAMOUS TATTOO AND PIERCING / AARON KARP – 731 Main Street Unit 101 – GBD2 – Map 12 Block 10-A. Site Plan Review for a post 1930 structure. Application for change of use from office space to service tattoo and body piercing and jewelry retail. *Approved on March 13, 2017.***

Mr. Hayes Moved to Approve the Findings of Fact for ALMOST FAMOUS TATTOO AND PIERCING / AARON KARP – 731 Main Street Unit 101 – GBD2 – Map 12 Block 10-A Site Plan Review as Amended.

HAYES/MACLEOD 5:0 UNANIMOUS

Mr. Wilkos noted that the Town Attorney was in attendance regarding item 4 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application and he asked for the Board's input about moving this item from the fourth hearing of the night to the first position on the agenda.

Ms. Freedman Made a Motion to Move Item 4 to Item 1 on the Agenda.

FREEDMAN/HAYES 5:0 UNANIMOUS

- 4. 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.**

Tim Forrester, Environmental Consultant with Eco-Analysts addressed the Site Plan Review Standards of Article 6.5 of the Ogunquit Zoning Ordinance:

1. Will allow the orderly and reasonable use of adjacent properties.

Mr. Forrester argued that the project meets the setback requirements; thus this standard is met by meeting those minimum requirements.

2. Will not adversely effect the safety, the health and the welfare of the Town.

Mr. Forrester stated that this is a privately owned parcel and has no application where Town properties are concerned. There are several other docks within the view of this one and the Applicant has worked to design this project with a marine contractor to ensure that it has no impact on safety, health, or the welfare of the Town.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

Mr. Forrester reiterated that this project involves a private parcel and there is no traffic associated with it other than the homeowners coming and going from their own residence.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

Mr. Forrester again reiterated that this is a private dock and doesn't involve any of the above-noted items.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

Mr. Forrester stated that none of these apply. There will be no electricity, gasses, or odors or anything of that sort that will apply to the project.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

Mr. Forrester stated that the only thing that may apply will be during the act of construction and the installation of the Helix Anchors. The installation equipment is temporary in nature during initial construction and will involve a small generator; and he doesn't believe these issues apply here.

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

Mr. Forrester stated the proposed structure will not interfere with existing or proposed parking or recreational facilities because none of these are located within the private residential parcel. The proposed structure is consistent with the public's right to fish, fowl, and navigate in the intertidal zone between the mean high and low water lines; which right is subject to the upland owner's right to wharf out. The majority of the project is outside of the intertidal zone.

That portion of the intertidal zone where the project is located will be elevated to eight and one half feet (8.5') which provides adequate clearance for folks to fish, fowl, and navigate. Also, the seasonal components of the structure will not be in use during the winter clamming seasons so there will be no impact to that.

8. Contains adequate, off-street parking in compliance with this Ordinance.

Mr. Forrester stated that this standard is not applicable.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

Mr. Forrester stated that the walkway will be elevated at a minimum of 1:1 height to width over intertidal vegetation; they have increased spans between vents of twenty- two feet (22') which will allow for unrestricted tidal flow and will minimize potential impact to marsh vegetation by allowing for more sunlight penetration and the potential for ice movement under the structure. Regarding the ice, he does not believe the potential for ice damage exists because of the way the structure is being designed. Major ice flows in the channel occur on the outside bend within the channel itself and the majority of the structure isn't located there. In addition the seasonal structures won't be in place during that time of year.

Mr. Forrester suggested that the upstream footbridge has pilings in the middle of the channel and if anything were to be a potential ice block it would be those pilings.

Also, the structure is being constructed with Helical Anchors which have superior holding strength to mount the pilings; these anchors have a tremendous resistance to uplift.

Regarding the walkway area, this area is only inundated during extreme high tides and by the time the water gets up there it has lost its velocity and power to move and force ice around. It is also extremely shallow so the ice will fetch up on land before it is moved around.

Mr. Forrester noted the old, single, hand dug post which is still in place out on the salt marsh, and he suggested that ice would have moved it a long time ago if ice was a problem.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

Mr. Forrester stated that he submitted a sign-off from the Maine Historic Preservation Commission; and the five State Indian Tribes were notified and no negative comments were received from them.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

Mr. Forrester stated that the two parcels consist of .68 acres and the proposed structure meets the required setbacks; as such there is sufficient and adequate area for the proposed structure that meets the setbacks for the Town of Ogunquit.

12. Will be adequately screened and buffered from contiguous properties.

Mr. Forrester stated that in accordance with Article 8.3 of the Zoning Ordinance the requirement of buffers pertains to non-residential structures and in his opinion this standard is not applicable. However the proposed structure will be constructed as low as possible to the ground in order to reduce potential visual obstructions while still meeting regulatory requirements of height to width. It will also be constructed with foot guides instead of handrails which will additionally reduce its view from across the marsh.

In addition the proposed structure is similar in design to existing structures which are visible in the area and provide a similar point of access to the resource.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

Mr. Forrester stated that he believes this item is not applicable.

14. Will provide for adequate pedestrian circulation.

Mr. Forrester stated that he believes this item is not applicable.

15. Anticipates and mitigates potential nuisance created by its location.

Mr. Forrester stated that the majority of the walkway is located above mean high water and within the Applicant's parcel and meets the requirement for the public's right to fish, fowl, and navigate between mean high and mean low water. The Applicant proposes elevating the structure in order to comply with that right. The Applicant has designed the ramp and float to land just beyond the bank to provide reasonable partial tide access to the river and adjacent waters. As such the proposed structure does not pose a nuisance to the public's right to use the area between high and low water.

Mr. Forrester stated that there were comments from the Harbor Master regarding impediments to navigation. The Applicant has addressed those comments because the dock is not located below the mean low water.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

Mr. Forrester stated that this item brings him to Section 9.15 of Section C - Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or Beyond the Normal High Water Line of a Water Body or Within a Wetland.

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

Mr. Forrester stated that the walkway begins on the Applicant's upland lawn and extends out over the saltmarsh with the use of Helix Anchors of a greater span, which are installed by a two

person team who stand on a piece of plywood to reduce impact on the vegetation. The anchor is wound into the ground. There are no shovels or excavation within the site. As a result the Applicant does not anticipate measurable causes of erosion.

2. The location shall not interfere with existing developed or natural beach areas.

Mr. Forrester stated that there are no beach areas within the site.

3. The facility shall be located so as to minimize adverse effects on fisheries.

Mr. Forrester stated that the proposed structure has been positioned to extend just beyond the top of the bank and provide partial tide access, the float will be elevated with skids to minimize impacts to sand flats during periods of low tide; the ramp and float will be in place on a seasonal basis. The project has been reviewed by the Maine Department of Marine Resources as well as the U.S. Fish and Wildlife Service neither of which identified any concerns regarding fisheries. There are no hatcheries or other related fisheries in the area according to the Fish and Wildlife's database.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

Mr. Forrester stated that the proposed walkway will be four feet (4') wide and the pier will be five feet (5') wide. There are other structures which can be viewed within the project vicinity that provide the same or greater amounts of tidal access, and the proposed structure will be consistent with the character of the area, including both private and public structures in the area. Mr. Forrester noted that the dominant feature within the view-shed is the footbridge located only four hundred feet (400') away. It is a public use structure however Mike Morse has stated that public and private use structures are evaluated under the same criteria.

Regarding the view-shed area, the general consensus is that you don't only look at adjacent properties as a definition of "an area", as to what is in eyeshot of the site. The Footbridge can be clearly seen, as can the downriver docks and the dune walkways. He noted that there is ample use in the area. Mr. Forrester asserted the Attorney Burns agreed with the opinions of Mr. Morse and the Applicant's attorney (Sandra Guay).

5. No new structure shall be built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

Mr. Forrester stated that he believes this item is not applicable.

6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

Mr. Forrester stated that he believes this item is not applicable.

7. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

Mr. Forrester stated that he believes this item is not applicable.

NOTE: Permanent structures projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A, §480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.

Mr. Forrester stated that the Applicant has received both the DEP and Army Corp Permits.

Mr. Forrester referred the Board to the Conservation Commission's comments. They asked for a Site Visit which the Board held on March 13, 2017. CONCOM also asked about the use of the plywood which he noted would only be a temporary use during installation. They raised a question about removal and storage of the ramp and float. The ramp will be stored on the end of the pier and the float will be disassembled and stored in an upland location on the Applicant's property tucked behind an existing fence.

Mr. Forrester stated that there had been a question regarding toxic materials. There are no toxic materials with the exception of the pressure treated pilings which will be cured for greater than twenty-one (21) days on land before installation, this meets DEP standards.

Regarding the comments on minimizing impact on the intertidal vegetation, Mr. Forrester reiterated that the 1:1 height to width ratio extends for the majority of the walkway to the place where the grade starts to drop. There they expand to a slightly wider pier section which will exceed the 1:1 standard. The boardwalk orientation is not west to east, it is northwest to southeast which will allow for additional sunlight coverage.

Mr. Forrester stated that there are no boats, no props, nothing of that nature proposed.

Mr. Forrester agreed to some conditions of approval:

1. The ramp and float will be removed before November 1st and would not go back into the water until March 31st which coincides with the shellfish season so they will not be in place to impact anyone's ability to harvest clams.
2. They will bolt cables to the inside stringers and Helical anchor them to the upland. This would prevent the pier from going anywhere should something happen to damage it. It would be tethered to the ground.
3. The float will be stored in the Applicant's upland when not in the water.

Attorney Harry Center asked the Board to review the criteria and handle this application tonight. He noted that Town Attorney Burns' legal input to the Board was the only open issue and that has been covered.

Mr. Wilkos noted that following the last meeting the Board asked Town Attorney Natalie Burns to review the Applicant's attorney's (Sandra Guay) letter and provide the Board with a legal opinion. In a letter dated March 20, 2017 Attorney Burns stated:

"You have asked that I review an opinion letter provided by Attorney Sandra Guay concerning an application for a private dock that is currently under review by the Planning Board. At issue in the opinion letter is the proper interpretation of Section 9.15.C.4 of the Zoning Ordinance. This section regulates piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high water line of a water body or within a wetland. The portion of the provision at issue states: "The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area."

There are three separate issues to be addressed. The first is the proper interpretation of the first sentence. In particular, how does the phrase "and be consistent with existing conditions, use and character of the area" relate to the provision "[t]he facility shall be no larger in dimension than necessary to carry on the activity"? Attorney Guay argues that because there is no comma between this phrase and the one before it, the proper interpretation is that "the dimensions of the dock be no larger than necessary in order to be consistent with the existing conditions."

The provision at issue was the subject of a Law Court decision in 1991. In that decision, the Law Court expressly addressed the relationship of these two phrases:

By that reasonable construction, the last half of the section imposes merely a *second* criterion for judging the allowable size of a proposed wharf. In other words, as applied here, section 13(F) (4) provides that the Lentines' wharf may not be *either* (1) "larger in dimension than necessary to carry on the activity" of deep water access for the Lentines' pleasure boat, *or* (2) "larger in dimension than ... [will] be consistent with existing conditions, use, and character of the area." Further, we construe the adjective "consistent" as the word is used in the context of section 13(F) (4) to mean "not conflicting or interfering with," so that the second dimensional requirement of the section is that the proposed wharf may not be so large that it conflicts or interferes with existing conditions, use, and character of the area that would be affected by the wharf. *Lentine v. Town of St. George*, 599 A.2d 76, 79 (1991) (emphasis added). The Law Court also rejected the argument that this provision was unconstitutionally vague, noting that (1) any ambiguity in an ordinance must be resolved to preserve its constitutionality and (b) its interpretation of the ordinance resulted in "constitutionally

adequate standards to guide the zoning boards in their decisions on applications for wharf permits."

Since the Law Court has expressly found that the contested language is not unconstitutionally vague, there is no need to address the decision in the *Kosalka case*. Because the Ordinance language in dispute is exactly the same as that in the *Lentine case*, the Planning Board must follow the Court's interpretation in its review of the pending application, applying the two phrases as separate requirements, each of which must be met by the application. The Board should also utilize the Law Court's interpretation of the second requirement; that "the proposed wharf may not be so large that it conflicts or interferes with existing conditions, use and character of the area that would be affected by the wharf."

The correct interpretation of the word "area" does not appear to be in dispute. Attorney Guay and I are in agreement with Mike Morse's opinion that this term means that the Board must look at what is up and down the river and not distinguish between public and private docks that are in existence.

The Board will need to be clear in its decision about what it considered in its review of the area and why it finds that the wharf is or is not (a) larger in dimension than necessary to carry on the activity and (b) so large that it conflicts or interferes with existing conditions, use, and character of the area that would be affected by the wharf. This should include a description of (1) the proposed dimensions of the dock and the proposed use; (2) the area considered by the Board to be "affected by" the dock; (3) the existing docks considered as part of that review; and (4) a description of other existing conditions, use and character of the area. The applicant has the burden of demonstrating compliance with this and the other standards in subsections 1-7.

Attorney Guay sent an additional email concerning the decision of the First Circuit Court of Appeals in *O'Connor et al. v. Oakhurst Dairy et al.*, decided on March 13, 2017. That case involved the question of whether work performed by drivers for Oakhurst Dairy fell within an exemption to Maine's overtime law. In construing the statute, the First Circuit determined that the work at issue did not fall within an exemption. As part of its construction of the statute, the Court discussed whether the omission of the comma in and of itself compelled the reading of the statute advanced by the plaintiffs in the case and found that it did not; the omission did, however, render the scope of the statute unclear. As such, the Court reviewed various other arguments about the drafting of the statute and after that analysis agreed with the plaintiffs' proposed interpretation because Maine law requires that ambiguous provisions in the state's wage and hour laws are to "be liberally construed to further the beneficent purposes for which they are enacted," meaning that the statute was to be interpreted to provide overtime pay protection to employees in this case.

The decision in the *O'Connor* case does not override the Law Court's decision in the *Lentine case*. As noted by the First Circuit in *O'Connor*, it would be bound by an interpretation of the Maine statute that was made by the Law Court. Because there was no decision by the Law Court interpreting the statute at issue, the First Circuit

interpreted the relevant section of the overtime law. In this case, the Law Court has interpreted the Ordinance provision at issue and that decision and the included interpretation are binding on the Town.”

Attorney Burns summarized that there was some confusion regarding how Section 9.15.C.4 of the Zoning Ordinance was to be interpreted. As written, it is somewhat confusing as to whether it establishes one overall standard or two separate standards regarding: “the facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.”

Attorney Burns noted that there is a Law Court case from the early 1990s which addressed this specific issue, and the Court did say that this particular provision is to be interpreted as two separate requirements: first, the Board determines whether it is “no larger in dimension than necessary to carry on the activity”; and then the Board determines whether it is “consistent with existing conditions, use, and character of the area”. There was an argument made that the Board had to combine those two together. The Law Court determined that the Board has to look at the two things separately.

While the Board has seven standards to review under Section 9.15.C they actually have eight items to discuss.

Mr. Wilkos asked if there were any questions.

Mr. Hayes asked if the ramp will have railings.

Mr. Forrester responded that the walkway has no railings however the ramp will have hand railings on both sides.

Mr. Hayes asked what would happen if the applicant decided he wanted railings on the walkway.

Mr. Heyland responded that, if the application is approved, the Applicant would have to come back for an amendment because there are no hand railings depicted on the plans in question here. Mr. Heyland added that according to the IBC handrails are not required because it is not a component or a means of egress of a dwelling unit or commercial structure. Mr. Heyland agreed it is unusual for a walking surface eight feet above grade to not require hand rails however he was unable to find anything that requires them.

Mr. Forrester agreed.

Mr. Hayes noted that a fall from eight and one half feet (8.5’) at low water would be dangerous.

Mr. MacLeod asked Attorney Burns to comment on her statement in her March 27th letter wherein she said; “The correct interpretation of the word "area" does not appear to be in dispute”. Mr. MacLeod disagreed with that statement.

Mr. MacLeod stated that since the beginning his position has been that this pier will bisect the only grass marshland in Ogunquit that is not part of the Rachel Carson Preserve. It is a foraging

area for endangered species (Least Tern and Piping Plover); and there are no other docks and piers on marshland in Ogunquit. Mr. MacLeod noted that thanks to Mr. Lee and Mr. Baker's comments at the last meeting he (Mr. MacLeod) did some reading of his own, specifically "Maine Issue and Profile of Docks and Piers in Shoreland Feeding and Roosting Areas" which states that shorebirds will not forage under, or near structures; and erosion and sedimentation diminish in vertebrate concentrations, that it provides access purchase for predators; and lastly that increased human activity will chase birds away from this critical foraging area. Mr. MacLeod asserted that his definition of "area" has credibility. He asked that these considerations be discussed.

Attorney Burns responded that the question posed to her was if the "area" was only the abutting properties, and the opinion she gave was that it was not. It is more than that; and one of the things this Board is going to have to do is determine what it feels the appropriate "area" is for consideration. The other thing she noted is that it doesn't matter if the structure is public or private, and she did not give an opinion as to whether a footbridge is treated the same as piers and docks, that is something the Board needs to determine.

Mr. MacLeod responded that neither the footbridge nor any of the other docks or piers installed on the river are in grassy marshland that is part of Piping Plover and Least Tern foraging areas.

Attorney Burns agreed that these are things the Board will have to consider; and she reiterated that "area" encompasses more than just direct abutters.

Mr. MacLeod stated that the dispute is whether this project meets the criteria of 9.15.C.4 Conditions, Use and Character of the Area.

Attorney Burns added that Mr. MacLeod seems to be asserting that critical habitat and foraging area for endangered species are factors in determining "area".

Mr. Wilkos asked where Mr. MacLeod read this information.

Attorney Burns asked if a copy could be included in the record.

Mr. MacLeod responded that it is from a website.

Mr. Wilkos asked if this was an article introduced by the Conservation Commission.

Attorney Burns noted that the two documents provided by the Conservation Commission were made a part of the record. She was not provided a copy of the article Mr. MacLeod is citing.

Mr. MacLeod summarized that the question for him is how to define "area" for purposes of this application.

Attorney Center objected to anything outside the record. He added that Mr. MacLeod said "it's my definition". He can't give his own definition into the record or refer to items that aren't part of the record.

Mr. MacLeod responded that this definition has been discussed repeatedly.

Attorney Burns added that it would be preferable for the Board to rely upon information that is in the record; and before them as of this meeting. However some of the things Mr. MacLeod has talked about are in some of the other documents.

Mr. MacLeod added that several of these issues were discussed by the Conservation Commission.

Attorney Center responded that if it is in the record that's fine, but if it's outside he would object that it shouldn't be considered.

Mr. Forrester responded that he has heard several times that there are no other docks that cover the marsh. He noted that in 2011 the Town approved a dock; and fifty-six feet (56') of that structure extends out over marsh vegetation. There are plenty of other docks that go out over marsh vegetation.

Mr. MacLeod asked if there are others, or just that one? And if there are others, where are they?

Mr. Forrester responded that there are eight docks in the area. He added that he is a biologist and he conducted a site visit with Inland Fisheries and Wildlife Biologist Brad Zisky before he even submitted this project. If they had had any problems with this project he (Mr. Forrester) wouldn't be before the Board now.

Ms. Freedman asked; if this project were approved, when would they start construction and how long would it take to complete.

Mr. Forrester responded that construction at this location is governed by Inland Fisheries and Wildlife, the standard deadline is the middle of April however IFW would likely agree to waive that deadline, particularly given the reconstruction of the Footbridge which involves large cranes and pile driving.

Ms. Freedman noted that the Board's paperwork states no construction between April 15th through September 15th.

Mr. Forrester asked where those dates come from.

Ms. Freedman responded that they come from the Applicant's own application paperwork.

Mr. Forrester responded that this is what is mandated by IFW but in consultation with them it was noted that this is a condition of the NRPA Permit issued by the DEP and IFW is the expert for DEP. If the Applicant starts to approach that deadline they will consult with IFW and get the OK to proceed. If the footbridge is still under construction the IFW can, and probably will, grant an extension. In terms of construction time, the Helix Anchors can be installed in two days and after that all work will be done with hand tools.

Ms. Freedman asked if both properties are owned by the same person.

Mr. Forrester agreed.

Attorney Burns added that for purposes of this application the two properties are owned by two realty trusts and for purposes of the Zoning Ordinance it's two separate owners.

Mr. Forrester reiterated that the proposed structure was originally laid out to be a completely common use structure. After consultation and advice from the Code Enforcement Officer it was redesigned to be entirely on the one northern parcel and will meet all setbacks. If the two parcels were separated the pier would become the property of the person owning that particular parcel.

At this time the Board reviewed the Site Plan Review requirements as outlined in Article 6.7 of the Ogunquit Zoning Ordinance.

A. Does this application involve a pre-1931 structure?

The Board determined that it does not involve a pre 1931 structure.

Has the application been reviewed by the OHPC?

Mr. Heyland confirmed that it has.

B. Has the Application been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it has.

C. The Planning Board shall review the specifics of the proposed application for compliance with Article 6.5 of the Ogunquit Zoning Ordinance as follows: The Board shall approve the above-noted application if the Applicant can prove that the proposed use or structure:

1. Will allow the orderly and reasonable use of adjacent properties.

By a show of hands the Board unanimously agreed that it will.

2. Will not adversely effect the safety, the health and the welfare of the Town.

By a show of hands the Board unanimously agreed that it will not.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

By a show of hands the Board unanimously agreed that it will not, because it's not applicable.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other

effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

By a show of hands the Board unanimously agreed that it will; and that it is not applicable.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

By a show of hands the Board unanimously agreed that it will not; and that it is not applicable.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

Mr. Wilkos noted that Mr. Forrester pointed out that this standard will be met post construction, that there will be some noise during construction and at the installation of the Helix Anchors.

Mr. Heyland agreed that this standard is applicable to the longevity of the final use.

By a show of hands the Board unanimously agreed that the structure will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

By a show of hands the Board unanimously agreed that it will not.

8. Contains adequate, off-street parking in compliance with this Ordinance.

By a show of hands the Board unanimously agreed that it does.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

By a show of hands the Board unanimously agreed it will not.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

By a show of hands the Board unanimously agreed that it will.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

By a show of hands the Board unanimously agreed that it does.

12. Will be adequately screened and buffered from contiguous properties.

Mr. Wilkos noted that Mr. Forrester has asserted that this standard does not apply to this project.

Mr. Heyland responded that the buffering section of the Zoning Ordinance is primarily applicable to buffering between commercial/non-residential properties and residential properties. He agreed that this standard is probably not applicable to this project.

By a show of hands the Board unanimously agreed that it will be adequately screened and buffered from contiguous properties.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

By a show of hands the Board unanimously agreed that it will.

14. Will provide for adequate pedestrian circulation.

Mr. Wilkos asked Mr. Heyland if this standard would apply to someone moving in/on the water.

Attorney Burns responded that this project is located on private property however a portion of that property is subject to a public trust easement i.e. the intertidal zone which is limited to use of fishing, fowling, and navigation. "Pedestrian circulation/use is limited to those three uses; it is not a general pedestrian access right.

Mr. Hayes asked about tubing in the river.

Attorney Burns responded that they have a right to the river; the Law Court has not made a determination on that specific use.

Mr. MacLeod noted that the Army Corp determined that this is not a navigable river, however he pointed out that kayaks and canoes navigate up and down it all the time.

Attorney Burns responded that she was unsure if it would be navigable in the intertidal area.

Mr. Forrester added that the Army Corp looks at the entire width of the river; applicants on each side are allotted 25% leaving a 50% swath down the middle of the river. The proposed project extends 8% into the resource making it well within Federal Standards in terms of navigation.

Mr. MacLeod pointed out that part of this question involves pedestrian access to the intertidal zone during clamming season when the ramp and float will be out of the water.

Mr. Forrester agreed.

By a show of hands the Board unanimously agreed that it will provide for adequate pedestrian circulation.

15. Anticipates and mitigates potential nuisance created by its location.

By a show of hands the Board unanimously agreed that it will.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

Mr. MacLeod suggested that this is where the proposal fails, because it does not meet Section 9.15.C.4.

Attorney Burns suggested the Board review Sections 9.C.1 through 7 and discuss those standards before it votes on this item (Item 16 of Article 6.7).

The Board agreed.

At this time the Board reviewed the standards contained in Section 9.15 Shoreland Zone Standards of the Ogunquit Zoning Ordinance.

C. Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or Beyond the Normal High Water Line of a Water Body or Within a Wetland.

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

By a show of hands the Board unanimously agreed that it will meet this standard.

2. The location shall not interfere with existing developed or natural beach areas.

By a show of hands the Board unanimously agreed that it will meet this standard.

3. The facility shall be located so as to minimize adverse effects on fisheries.

By a show of hands the Board unanimously agreed that it will meet this standard.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

Mr. MacLeod expressed his belief that the Applicant does not meet this standard. He suggested that this site is located in the only substantial salt grass marsh on any part of the river. There are no other docks and piers in that area and it will interfere with, at the very least, the foraging of the Piping Plovers and Least Terns; and that this is an area of concern.

Mr. Wilkos asked for confirmation that Mr. MacLeod is questioning the “existing conditions, use, and character of the area

Mr. MacLeod agreed. He added that his concern is dependent upon the definition of “the area”. It could be defined as the length of the river or it could be defined as that unique piece of salt marsh.

Mr. Wilkos asked if Mr. MacLeod’s concern regarding the Piping Plovers was brought up by the Conservation Commission.

Mr. MacLeod confirmed that it was discussed several times by them.

Attorney Center asked the Chairman if this was in contradiction to the Town Attorney’s opinion on the definition of both “area” and this section in the Standard. He noted that this would be OK, boards and commissions often choose not to follow the legal advice of their attorney; but he (Attorney Center) thought Attorney Burn’s letter was very clear regarding the “area” and the applicability of the standard. Only size relates to character and use, the Supreme Court has said that the Board can’t just tag this as a comprehensive area and use requirement on this exact same language and stick it in on the end of a specific limitation on size. In order for it to fail the Board will have to say that the “size”, as proposed, is inconsistent with the character and use; not just an arbitrarily general standard of character and use as well as beyond the definition of what Attorney Burns has suggested as “area”.

Attorney Burns disagreed with Attorney Center’s interpretation. She asserted that, under the *Lentine* case this question involves two separate standards. The Board looks at whether the structure is larger in dimension than necessary to carry on the activity; and then the Board looks at whether it is consistent with the existing conditions, use, and character. Attorney Burns asserted that the Law Court said this in the *Lentine* Case.

Mr. Wilkos asked if Attorney Burns is saying that this standard is actually two pieces.

Attorney Burns responded that this is how she read that Law Court Case.

Mr. Wilkos referred back to Attorney Burns’ March 20, 2017 Memo to the Board wherein she stated that the Board should apply the two phrases as separate requirements, each of which must be met by the application.

Attorney Burns clarified her earlier statement. She stated that it may not be either larger in dimension than necessary to carry on the activity of deep water access, or larger in dimension than will be consistent with existing conditions, use, and character of the area. Attorney Burns expressed her belief that the Board has already stated that this is what the Board is going to look at.

Attorney Center responded that he did not disagree with this interpretation, however he is covering for Attorney Sandra Guay and he was under the impression that there was no issue with this.

Attorney Burns responded that she may have misstated and she wants to be clear that her opinion remains what it was in her letter to the Board. She does not believe the Board is confused about the question, she believes the Board is looking at this standard appropriately.

Attorney Center responded that he thought he heard that the issue went beyond the size of the dock being inconsistent with the character, but it is the whole thing being inconsistent with the character.

Attorney Burns responded that it is her understanding that Mr. MacLeod's concern is with the size of the dock being inconsistent however he will have to confirm that himself.

Mr. MacLeod responded that he has not yet objected to the dimensions of the structure. He noted the provisions included in the *Lentine* Case and their application to this case: the proposed dimensions are so large that it completely bisects an area of marsh grass on the river, the area of consideration is an area of marsh grass between the footbridge and a small stream by Beach Plum Farm which is the area Mr. MacLeod is looking at. He noted that there are no other docks in that area; and the existing conditions are that it is a foraging area for endangered Piping Plovers and Least Terns. For these reasons he does not believe this application meets Section 15.C.4.

Mr. Wilkos asked Attorney Burns if the Board should consider this piece in two parts.

Attorney Burns suggested they should, she based this upon the Law Court's guidance and interpretation of that specific provision. First they will decide if it is larger in dimension than necessary to carry on the activity, which in this case is access for a boat. Then the Board will move onto the second section which is larger in dimension than will be consistent with existing conditions, use, and character of the area.

Mr. Wilkos asked the Board to consider whether the proposed structure is larger in dimension than necessary to carry on the activity.

Mr. MacLeod noted that it is the smallest length it needs to be in order to reach the river, so in that perspective it's no larger than it needs to be. The other perspective is that it is a three to four minute walk to a public boat landing, as an alternative to bisecting the marsh land. In that sense it is larger than necessary.

Attorney Burns noted that, unlike the State, the Board does not have a standard regarding alternatives and she recommended against that discussion.

Mr. MacLeod withdrew his comment.

Mr. Wilkos asked the Board members to express their opinion as to whether the proposal is larger in dimension than necessary to carry on the activity.

By a show of hands the Board unanimously agreed that it is no larger in dimension than necessary to carry on the activity.

Mr. Wilkos asked the Board to consider whether the proposal is consistent with existing conditions, use, and character of the area.

Mr. MacLeod responded that his concern is that it is within the right of the Board to consider the specific area effected here. In this case, he believes, the area effected is the salt marsh between the footbridge and the stream next to Beach Plum Farm. He noted that this is the widest marshland on the river and this proposal would significantly change the character of that area in negative ways.

Mr. Wilkos asked Attorney Burns if this is consistent with the definition of “area” in the Town’s Ordinance.

Attorney Burns responded that the Town doesn’t have a definition of “area” in the Ordinance. One of the things the Board will have to do is define the area it believes is appropriate for consideration. Mr. MacLeod has expressed what he feels is the appropriate definition and the Applicant has provided another definition. The Board will need to determine what it believes to be the appropriate definition for the purpose of applying this standard.

Mr. Forrester referred to the memo from Mr. Morse which gives the definition as being between $\frac{1}{4}$ and $\frac{1}{2}$ mile or within the eye’s view. Mr. Forrester noted that from the site it is clear that a person can clearly see from the footbridge to the north all the way to the bridge at the Main Beach and the walkways that stem across the marsh.

He suggested that to limit the definition in Mr. MacLeod’s fashion is a bias in one direction. He also disagreed that this is the largest area of marsh outside of the Rachel Carson Preserve. He noted another parcel which he claims is larger than the Applicant’s site.

Mr. Forrester stated that in his experience “area” has always meant “as the eye sees; and what a person sees when they are physically on site. He would not limit “area” to an arbitrary region of stream. He added that the Town Attorney’s letter suggested looking up and down the river; and not looking at other structures. Mr. Forrester suggested that arbitrarily stopping at the bridge is inconsistent with the Town Attorney’s opinion.

Mr. MacLeod argued that it isn’t arbitrary. This area is different than any other part of the river south of the footbridge.

Attorney Burns responded that, as part of its decision, the Board needs to include what it finds to be the appropriate area for application of this standard. It is up to the Board to determine the “area” and the character of the area.

Mr. Wilkos again asked Mr. MacLeod to explain his reasoning for his delineation of the “area” as being between the Footbridge and the stream by Beach Plum Farm.

Mr. MacLeod responded that the Applicant’s site is the only significant marsh grass area which is not part of the Rachel Carson Preserve. It is a Least Tern and Piping Plover foraging ground, and there are no other bridges, piers, or wharfs in that area and it practically extends up to Route One as Mr. Forrester pointed out.

Mr. Wilkos asked for the other Board members’ opinions.

Mr. Hayes agreed with Mr. MacLeod that this area of the river is what the Board needs to concern itself with and looking upriver was the footbridge. He noted that downriver the river moves into a “cove like” area.

Mr. Heyland added that the Maine DEP’s interpretation said the area is within eyeshot of the proposed location. He noted that the Board held a site visit and he suggested that the DEP might interpret area as what the members were able to see.

Ms. Freedman asked about all the other agencies that approved this proposal.

Ms. Burns responded that while some of the standards are very similar, the Law Court has always said that each agency, including this Planning Board, has to conduct its own review under its own standards; and make its own decision under the standards of the Town Ordinance.

Mr. Wilkos again asked for the Board members’ opinions.

Ms. Freedman and Ms. Bevins disagreed with Mr. MacLeod.

Mr. MacLeod reiterated that the Maine DEP is responsible for about 3500 miles of coastline and the Town of Ogunquit is responsible for perhaps one or two miles of shoreline in the river and as such the Town’s considerations should be tighter.

Mr. Wilkos noted that the Harbor Master, the Conservation Commission, and Shellfish Warden all spoke in opposition to this proposal.

Mr. MacLeod noted that he believed they were speaking to the general use of the area and their opinions colored his opinion.

Mr. Forrester noted that given the time of year of the Site Visit most of the floats, boats, etc were not in place and the Board did not see the maximum use.

Mr. Wilkos agreed with Mr. MacLeod and Mr. Hayes.

Attorney Burns summarized that the Board has determined the area as being from the Footbridge downstream to the stream by the Beach Plum Farm. The Board also found that the proposed structure will be no larger in dimension than is necessary to carry on the activity. The discussion involved the area and the existing use and conditions. She asked if the Board had any other information they want to say about this. She noted that discussion has been about the habitat.

Mr. Wilkos asked the Board members to express their opinion, by a show of hands, as to whether it is consistent with the existing conditions, use, and character of the area.

By a show of hands the Board determined 2:3 that it is not consistent with the existing conditions, use, and character of the area (Ms. Bevins and Ms. Freedmen felt the project was

consistent with the existing conditions, use and character of the area; and Mr. Wilkos, Mr. MacLeod, and Mr. Hayes felt it was not consistent with the existing conditions, use, and character of the area).

Mr. Wilkos stated that Standard #4 was not met by a 2:3 opinion. Two members feeling it met the standard and three members of the opinion that it did not meet the standard.

5. No new structure shall be built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

By a show of hands the Board unanimously agreed that this standard is not applicable to this project.

6. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

By a show of hands the Board unanimously agreed that this standard is not applicable to this project.

7. Structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure.

By a show of hands the Board unanimously agreed that this standard is not applicable to this project.

At this time the Board returned to its review of Item 16 of Section 9.15.C.4 of the Site Plan Review Standards: Does the proposal comply in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

Mr. Wilkos noted the Board's discussion regarding Section 9.15 Shoreland Zone Standards of the Ogunquit Zoning Ordinance. Piers, Docks, Wharves, Bridges, and Other Structures and Uses Extending Over or Beyond the Normal High Water Line of a Water Body or Within a Wetland, and that this item was determined to have not been met.

Mr. Wilkos repeated the Board's decision by a show of hands that the Board has determined 2:3 that this project is not consistent with the existing conditions, use, and character of the area (Ms. Bevins and Ms. Freedmen felt the project was consistent with the existing conditions, use and character of the area; and Mr. Wilkos, Mr. MacLeod, and Mr. Hayes felt it was not consistent with the existing conditions, use, and character of the area).

Mr. Wilkos stated that Item C.4 has been found, by three Board members, to have not been met.

Attorney Burns informed the Board that they will need to have written Findings of Fact. She asked the Board to allow the Findings to be drafted and brought back to the Board for its April 10, 2017 meeting. At that time the Board can do its final vote and adopt the Findings of Fact at the same time.

Mr. Wilkos responded that normally the Board votes at one meeting; then accepts its Findings of Fact at the following meeting.

The Recording Secretary asked if, in the interim, documents may be submitted regarding this application. What will the application's status be?

Attorney Burns responded that it will be postponed and the Board is going to take a vote and adopt Findings at that meeting. The Board could vote at this meeting however the Courts have suggested that it is a better practice to adopt the Findings at the same meeting at which the Board makes a final vote.

Attorney Center stated that he did not object to Attorney Burns' proposed procedure; and he asked if he might submit his own Findings for consideration.

Attorney Burns responded that would be fine as long as a copy is sent to the Code Enforcement Officer and her (Attorney Burns).

Attorney Burns informed the Board that they will be presented with two drafts of Findings, and at the next meeting the Board can determine which Findings they want to adopt. The Board might even pick and choose sections out of both Findings and create a third draft. She noted that the decision is up to the Board.

The Board agreed to follow Attorney Burns' suggested protocol

Mr. Wilkos stated that this application will be tabled, with the Applicant's agreement, to the next meeting when the Board will vote to adopt a Findings of Fact and take a final decision vote. He stated that the vote at the next meeting will be for denial unless one of the Board members should decide to change his/her mind.

**Mr. Hayes Moved to Table the Application for 10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.
HAYES/MACLEOD 5:0 UNANIMOUS**

- 2. RENATA MOON LLC dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2. Design Review and Site Plan Review for a pre 1931 structure. Application to remove existing garage and replace it with a new structure: garage with two units and an owner's quarters above.**

Mr. Wilkos noted a Site Visit was held earlier in the day. He asked if there were any questions from the Board.

Mr. Feldman referred to his memo of January 16, 2016 which contained suggested conditions of approval:

1. The number of rooms be restricted to nine;
2. The Applicant be required to meet all Ogunquit Historic Preservation Commission (OHPC) recommendations, which she has agreed to do.

Mr. Wilkos reviewed the OHPC's January 15, 2017 e-mail correspondence (*a copy of which will be archived in the Applicant's Planning Board file*).

Ms. Tourangeau verbally agreed to all of the OHPC recommendations:

1. Shutters matching the main Inn building;
2. Faux barn door to the right of the garage;
3. Vegetative barrier between the Applicant's property and Georges Grant.

Mr. Hayes asked Ms. Tourangeau about the proposed change of the first floor existing guest bedroom into a guest lounge. He asked that the door and hinges for that room be removed.

Mr. Bevins noted that this is being requested so that the Applicants cannot use the room as a bedroom.

Ms. Tourangeau responded that, while she can't think of a reason not to do this; and she understood this request, there may be a scenario that could come up in the future where she might want the door there. She noted that guests may want a private space for meetings or something else.

At this time the Board reviewed the Design Review checklist

- A. Does this review involve a structure built prior to December 31, 1930?

Mr. Heyland noted that, even though this project was reviewed by the OHPC and the Applicant has agreed to their design requests, this project is specific to the garage which is not a pre 1931 structure.

- B. Review the specifics of the proposed application for compliance with Article 11.7.C of the Ogunquit Zoning Ordinance as follows:

1) **Scale of Building** – Is the scale of the building visually compatible with the site and neighborhood as to the relationship of the open spaces around it and the size of doors/windows/porches/balconies?

By a show of hands the Board unanimously agreed that it is.

2) **Height** – Is the height of the building visually compatible with the heights of the buildings in the neighborhood?

By a show of hands the Board unanimously agreed that it is.

3) **Proportion of Front Façade** – Is the relationship of the width to the height of the front façade visually compatible with that of its neighbors?

By a show of hands the Board unanimously agreed that it is.

4) **Relationship of Solids to Voids in Front Façade** – Is the pattern of solids and voids in the front façade visually compatible with that of its neighbors?

By a show of hands the Board unanimously agreed that it is.

5) **Proportions of Openings Within the Facility** – Is the relationship of the height of windows and doors to their width visually compatible with the architectural style of the building and with that of its neighbors?

By a show of hands the Board unanimously agreed that it is.

6) **Roof Shapes** – Is the shape and proportion of the roof visually compatible with the architectural style of the building and with those of neighboring buildings?

By a show of hands the Board unanimously agreed that it is.

7) **Relationship of Façade Materials** – Are the facades of a building, particularly the front façade, visually compatible with those of other buildings around it?

By a show of hands the Board unanimously agreed that it is.

8) **Relationship of Spaces to Buildings on the Street** – Has the rhythm of spaces to buildings been considered when determining visual compatibility, whether it is between buildings or between a building and the street?

By a show of hands the Board unanimously agreed that it has.

9) **Site Features** – Is the size, placement, and materials of walls, fences, signs, driveways, and parking areas visually compatible with the building and neighboring buildings?

By a show of hands the Board unanimously agreed that it is.

10) **Architectural, Historical or Neighborhood Significance** – Have the construction, reconstruction, maintenance, or moving of pre-1931 buildings been done in a manner which is visually compatible with the architectural, historical or neighborhood significance of buildings existing in 1930.

By a show of hands the Board unanimously agreed that this standard is not applicable.

**Mr. Hayes Moved to Approve the Design Review Application for RENATA MOON LLC
dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2.
HAYES/BEVINS 5:0 UNANIMOUS**

At this time the Board reviewed the Site Plan Review requirements as outlined in Article 6.7 of the Ogunquit Zoning Ordinance and found that all the requirements were either not applicable or met.

A. Does this application involve a pre-1931 structure?

The Board determined that it does not involve a pre 1931 structure.

Has the application been reviewed by the OHPC?

The Board determined that it has.

B. Has the Application been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it had.

C. The Planning Board shall review the specifics of the proposed application for compliance with Article 6.5 of the Ogunquit Zoning Ordinance as follows: The Board shall approve the above-noted application if the Applicant can prove that the proposed use or structure:

1. Will allow the orderly and reasonable use of adjacent properties.

By a show of hands the Board unanimously agreed that it will.

2. Will not adversely effect the safety, the health and the welfare of the Town.

By a show of hands the Board unanimously agreed that it will not.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

By a show of hands the Board unanimously agreed that it will not.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

By a show of hands the Board unanimously agreed that it does.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

By a show of hands the Board unanimously agreed that it will not.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

By a show of hands the Board unanimously agreed that it will not.

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

By a show of hands the Board unanimously agreed that it will not.

8. Contains adequate, off-street parking in compliance with this Ordinance.

By a show of hands the Board unanimously agreed that it will.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

By a show of hands the Board unanimously agreed that it will not.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

By a show of hands the Board unanimously agreed that it will.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

By a show of hands the Board unanimously agreed that it has.

12. Will be adequately screened and buffered from contiguous properties.

By a show of hands the Board unanimously agreed that it will.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

By a show of hands the Board unanimously agreed that it will.

14. Will provide for adequate pedestrian circulation.

By a show of hands the Board unanimously agreed that it will.

15. Anticipates and mitigates potential nuisance created by its location.

By a show of hands the Board unanimously agreed that it will.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

By a show of hands the Board unanimously agreed that it will.

Mr. Hayes Moved to Approve the Site Plan Review Application for RENATA MOON LLC dba THE PUFFIN INN – 433 Main Street - Map 14 Block 16 – GBD2 with the following conditions:

1. **Applicant agrees to all OHPC requests**
 - a. **Shutters matching the main Inn building;**
 - b. **Faux barn door to the right of the garage;**
 - c. **Vegetative barrier between the Applicant's property and Georges Grant.**
2. **There will be a maximum of nine guest bedrooms;**
3. **The door and hinges currently on guest bedroom #1 will be removed.**

HAYES/BEVINS 5:0 UNANIMOUS

3. **FAIRPOINT COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Site Plan Review Application to install wireless small cell antennas and related equipment on existing utility poles.**

Mr. Wilkos noted that a Public Hearing had been held earlier in the meeting and no one had any comments.

Attorney Scott Anderson informed the Board that the photographs he submitted to the Board are an approximate representation of what the cells will look like.

Mr. Wilkos asked the Board members if they felt the cells will need to be screened.

The Board agreed that this would not be necessary.

Attorney Anderson noted that they propose painting the cells a grayish color which tends to blend in with the background very well. The goal is to make it a dull gray which is less reflective. He noted that they could color them brown or blue or any other color however as they need to be repainted it adds another level of maintenance. The gray color helps make it look similar to transformers and during most weather the gray is least visually obtrusive.

The Board members unanimously agreed to the proposed dull gray color.

At this time the Board reviewed the Site Plan Review requirements as outlined in Article 6.7 of the Ogunquit Zoning Ordinance and found that all the requirements were either not applicable or met.

A. Does this application involve a pre-1931 structure?

The Board determined that it does not involve a pre 1931 structure.

Has the application been reviewed by the OHPC?

The Board agreed that this is not applicable.

B. Has the Application been submitted for review by all Applicable Town Department Heads?

Mr. Heyland confirmed that it had.

C. The Planning Board shall review the specifics of the proposed application for compliance with Article 6.5 of the Ogunquit Zoning Ordinance as follows: The Board shall approve the above-noted application if the Applicant can prove that the proposed use or structure:

1. Will allow the orderly and reasonable use of adjacent properties.

By a show of hands the Board unanimously agreed that it will.

2. Will not adversely effect the safety, the health and the welfare of the Town.

By a show of hands the Board unanimously agreed that it will not.

3. Will not create an undue increase of vehicular traffic congestion on public streets or highways.

By a show of hands the Board unanimously agreed that this is not applicable.

4. Includes adequate and proper public or private facilities for the storage, treatment, handling, use of, removal, or discharge of sewage, refuse, hazardous material or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use.

By a show of hands the Board unanimously agreed that this is not applicable.

5. Materials incidental thereto or produced thereby will not give off noxious gases, odors, smoke or soot.

Attorney Anderson responded that they will not and there is no sound associated with these cells.

By a show of hands the Board unanimously agreed that it will not.

6. Will not cause disturbing emission of electrical discharges, dust, light, vibration, or noise.

Attorney Anderson stated that there will be no electrical discharges.

By a show of hands the Board unanimously agreed that it will not.

7. The operations in pursuance of the use will not cause undue interference with the orderly enjoyment by the public of parking or recreation facilities, existing, or proposed by the Town or by other competent governmental agencies.

By a show of hands the Board unanimously agreed that it will not.

8. Contains adequate, off-street parking in compliance with this Ordinance.

By a show of hands the Board unanimously agreed that this is not applicable.

9. Does not create a hazard to life, limb or property because of fire, flood, erosion created by reason of use, or by the structures to be used therefore, or by the inaccessibility of the property or structures thereon for convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.

By a show of hands the Board unanimously agreed that it will not.

10. Will be sensitive to adjacent historic properties in compliance with Article 11.

By a show of hands the Board unanimously agreed that this is not applicable.

11. Has a plot area which is sufficient, appropriate and adequate for the proposed use and the reasonably anticipated operation thereof.

By a show of hands the Board unanimously agreed that it has.

12. Will be adequately screened and buffered from contiguous properties.

By a show of hands the Board unanimously agreed that this is not applicable.

13. Will be constructed with adequate landscaping in compliance with this Ordinance, and provision for a storm water drainage system in compliance with the Ogunquit Subdivision Regulations.

By a show of hands the Board unanimously agreed that this is not applicable.

14. Will provide for adequate pedestrian circulation.

By a show of hands the Board unanimously agreed that this is not applicable.

15. Anticipates and mitigates potential nuisance created by its location.

By a show of hands the Board unanimously agreed that this is not applicable.

16. Complies in a satisfactory manner with all applicable performance standards criteria contained in this Ordinance.

Mr. Wilkos noted that the Board received a memo from Attorney Burns agreeing with Mr. Heyland that the Application should have been moved forward after the February 27, 2017 Hearing.

By a show of hands the Board unanimously agreed that it will.

Mr. Heyland asked the Board to include a condition of approval that a permit or notification from the DOT will be submitted to the Code Enforcement Office prior to commencement of any installation of equipment.

Ms. Freedman Moved to Approve the Application for FAIRPOINT COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Site Plan Review Application to install wireless small cell antennas and related equipment on existing utility poles, with the condition that a permit or notification from the DOT will be submitted to the Code Enforcement Office prior to commencement of any installation of equipment.

FREEDMAN/BEVINS

Attorney Anderson pointed out that while the application form did say Fairpoint / CMP the actual applicant is Verizon Wireless.

Mr. Wilkos asked if there was any additional discussion. There being none he called for a vote on Ms. Freedman's motion.

Ms. Freedman Moved to Approve the Application for VERIZON WIRELESS COMMUNICATIONS – 488 Main Street (Map 8 Block 8), 622 Main Street (Map 9 Block 82), and 714 Main Street (Map 10 Block 1) - all GBD2. Site Plan Review Application to install wireless small cell antennas and related equipment on existing utility poles, with the condition that a permit or notification from the DOT will be submitted to the Code Enforcement Office prior to commencement of any installation of equipment.

FREEDMAN/BEVINS 5:0 UNANIMOUS

4. **10 and 12 BEACH PLUM LANE REALTY TRUSTS – 10 and 12 Beach Plum Lane – Map 9 Blocks 66A and 66B – R/RP. Site Plan Review Application for a post December 31, 1930 structure. Application to construct a 4'x190' fixed walkway and 5'x30' pier connected to a 3'x26' seasonal ramp and 10'x20' float for access to the Ogunquit River; to serve both residences.**

(See Discussion noted above under Item #1)

G. NEW BUSINESS – None

H. CODE ENFORCEMENT OFFICER BUSINESS –

Mr. Heyland noted that there will be a workshop regarding procedures to enforce continued code violations. This workshop will take place on April 10, 2017 at 4:00 p.m.

I. OTHER BUSINESS – None

J. ADJOURNMENT –

**Mr. MacLeod Moved to Adjourn at 8:30.
MACLEOD/HAYES 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Planning Board Recording Secretary

Approved on April 10, 2017